

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

NICHOLAS L. ENERSON,

Plaintiff,

v.

Case No. 12-C-0248

MARYANN SLINGER,

Defendant.

ORDER DISMISSING CASE

Now before me is the Wisconsin Department of Justice's Suggestion of Death (ECF No. 8). On March 14, 2012, Plaintiff Nicholas L. Enerson filed a complaint against only one defendant, Maryann Slinger, a nurse at Waupun Correctional Institute. Rule 25 sets forth a procedure to follow for substituting a party who dies during the course of the proceedings. 28 U.S.C. § 2404, Death of defendant in damage action, provides:

A civil action for damages commenced by or on behalf of the United States or in which it is interested shall not abate on the death of a defendant but shall survive and be enforceable against his estate as well as against surviving defendants.

However, this case was not commenced by or on behalf of the United States. Nor is there any evidence that the United States "is interested" in this case. Moreover, Defendant Slinger did not die while this case was pending, but on March 6, 2012, just over a week prior to the filing of plaintiff's complaint.

Slinger had not been served with plaintiff's complaint and, due to her death, plaintiff will not be able to serve her with his complaint. Service of the summons and complaint (or waiver of service) is a prerequisite to the court's exercise of jurisdiction over a defendant. *Omni Capital Intern. Ltd. v. Rudolph Wolff & Co., Ltd.*, 484 U.S. 97, 103 (1987). Accordingly, I cannot exercise jurisdiction over Slinger or her estate. Plaintiff's case will be **DISMISSED**. Despite my earlier order (ECF No. 7) directing the Secretary of the Wisconsin Department of Corrections to collect from the plaintiff's prison trust account the \$348.97 balance of the filing fee, I have determined, in my discretion, that this balance need not be collected.

SO ORDERED this 24th day of April, 2012.

s/ William C. Griesbach
William C. Griesbach
United States District Judge